1. S.B.Civil Revision Petition No.1311/2003
   Bhandari Vimal Chand Mahaveer Chand vs. Bagh Singh.
2. S.B. Civil First Appeal No.324/2003
   Bhandari Vimal Chand Mahaveer Chand vs. Bagh Singh.

Date : 30.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr.DR Kawadia, for the petitioner/appellant.
Mr. RR Nagori, for the respondent.

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Heard learned counsel for the parties.

The petitioner/appellant has preferred the revision petition to challenge the order dated 2.9.1998 whereas he has preferred regular first appeal to challenge the judgment and decree dated 12.10.1999 passed by the trial court.

Brief facts of the case are that the petitioner/ plaintiff filed suit for recovery of certain amount against the respondent/defendant. Proceedings were taken substantially in the civil suit. Thereafter, the defendant submitted an application on 2.9.1998 praying that suite proceedings may be stayed because the defendant is agriculturist and his debt can be determined only under the provisions of Rajasthan Relief of Agricultural Indebtedness Act, 1957 (for short 'the Act of 1957'). The trial court

straightaway passed the order that the parties are directed to approach the Debt Relief Court under Section 5(2) of the Act of 1957. It appears that none of the parties approached the Debt Relief Court. Therefore, the plaintiff submitted an application before the trial court that the defendant is not an agriculturist and he has not submitted any petition under the provisions of the Act of 1957, therefore, the plaintiff's suit be revived. The trial court held that in view of the order dated 2.9.1998, the plaintiff could also have approached the Debt Relief Court but has not moved any application, therefore, the plaintiff's suit deserves to be dismissed. Therefore, the trial court dismissed the plaintiff's suit vide judgment dated 12.10.1999.

The order dated 2.9.1998 if is set aside, then the judgment of the trial court dated 12.10.1999 will fall to the grounds, therefore, the revision petition is considered first.

Learned counsel for the respondent vehemently submitted that the plaintiff himself in his plaint pleaded that the defendant is agriculturist and further he also admitted in his statement before the trial court that the defendant is agriculturist. In view of the above and in view of the order dated 2.9.1998, the plaintiff should have submitted the application under Section 6 of the Act of 1957 for determination of claim of the plaintiff.

Learned counsel for the respondent pointed out that as

per the facts recorded in the judgment dated 12.10.1999, there is an order-sheet dated 24.5.1998 wherein it has been recorded that both the parties have disclosed in the pleadings that the defendant is agriculturist. According to learned counsel for the respondent, in view of the said fact also, the defendant is agriculturist and, therefore, the suit was not maintainable in civil court and the order was passed on admission of the plaintiff himself.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It appears from bare plaint reading, which has been read by learned counsel for the respondent, that the plaintiff in his plaint stated that the defendant is an agriculturist and is a grocery trader. It appears that the plea was taken as an admission of the plaintiff with respect to the defendant's status as agriculturist ignoring that the plaintiff pleaded both for the defendant, one, he is agriculturist and another he is trader also. It may be true that certain certified copies of revenue records are on record but in view of the contest between the parties on the question of fact whether the defendant is agriculturist within the Act of 1957 and the loan advanced is to a trader and whether the transaction is exempted under the provisions of the Act of 1957, are required to be decided.

In view of the above, this revision petition is allowed and the order dated 2.9.1998 is set aside. Consequently,

the judgment and decree dated 12.10.1999 dismissing the suit falls to ground, therefore, set aside and the first appeal is allowed.

The trial court is directed to frame issue whether the defendant is agriculturist within the meaning of the Act of 1957 ? and whether the money transaction between the parties falls in the definition of debt as provided under the Act of 1957 ? and thereafter pass appropriate order.

Both the parties are directed to appear before the trial court on 16.10.2006.

(PRAKASH TATIA), J.

S.Phophaliya